

BUREAU OF LAW
MEMORANDUM

TO: Acting Commissioner Gallman,
Commissioners Manley and Koerner

FROM: E. H. Best, Counsel

SUBJECT: Turco Milk Transportation Co., Inc.

Transmitted herewith for review and approval by the Commission is file of the above corporation and a proposed order compromising taxes.

A petition for compromise was filed on behalf of the corporation in December of 1968. The file consists of additional documentation obtained from the petitioner as well as from the files of the operating bureaus and the Albany District Office.

The petitioner requests that all taxes owed by it be compromised for the sum of \$20,000. Petitioner's liabilities consist of approximately \$25,000 for truck mileage tax, \$44,000 for diesel motor fuel tax, \$600 for corporation franchise tax, and \$3,000 for withholding tax. With respect to the withholding tax, compromise thereof is not included in the order in view of the fact that personal liability for payment attaches to the responsible corporate officers (Tax Law, § 685(n)).

The order will also provide a basis for releasing the liens of the many warrants filed.

The corporation ceased operations in November of 1968. At that time, it had accumulated losses for past years and had a capital deficit of \$139,000. Its business for the period until it discontinued operations in 1968 resulted in a further net loss of approximately \$60,000.

Petitioner corporation seeks compromise as an alternative to bankruptcy so that it may complete a contract to sell its rights under a Public Service Commission Certificate for \$120,000. In addition to the State Tax Commission, there are liens of the Internal Revenue Service and prior liens of private creditors. The sale is contingent on sale of such rights free of encumbrances. An affidavit submitted by the corporation's president shows that the proceeds are to be distributed, \$60,000 to pay Federal and State taxes, \$55,000 to other prior lien holders, and the balance for fees.

This matter was delayed in processing because the petition showed a transfer of property to A & P Equipment Supply Corp., a separate entity in which the stockholders are apparently the same as in the petitioner. However, it appears that part of the arrangements will result in refinancing of the property, which will require releasing liens which had attached prior to the transfer. Although many of the warrants precede the transfer, they are nevertheless junior to mortgages and other Federal liens which appear to exceed the value of the property.

On the basis of the petition and supplemental documents submitted, the corporation is clearly insolvent and, in view of the outstanding prior encumbrances, the amount offered is not less than would be recoverable in legal proceedings. Accordingly, it is my recommendation that the Offer in Compromise be accepted and the order so providing be executed by the Commission.

Upon approval, the file will require further processing by this office.

E. H. Best
Counsel

MK:sc

November 12, 1970

Enc.

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	ORDER
TURCO MILK TRANSPORTATION CO. INC.,	:	OF
for compromise of taxes imposed under	:	COMPROMISE
Articles 9, 12-A, 21 and 22 of the	:	
Tax Law	:	

A verified petition having been duly submitted by Turco Milk Transportation Co., Inc., Morton Boulevard, Kingston, New York, pursuant to subdivision 15, Section 171 of the Tax Law praying for a compromise of its tax liabilities; and

IT APPEARING from the proof submitted and from the files and records of the Department of Taxation and Finance that said corporation is indebted to the State Tax Commission for diesel motor fuel tax imposed by Article 12-A in the amount of \$40,921.95, in accordance with Schedule A attached, plus additional penalties and the interest on such tax, and truck mileage tax imposed pursuant to Article 21 of the Tax Law in the amount of \$21,123.50, as set forth in Schedule B attached hereto, plus additional penalties and interest thereon; and

IT FURTHER APPEARING that warrants having been filed as listed on Schedule C attached hereto, through October 10, 1968, and additional warrants having been subsequently filed for cases listed in Schedules A and B numbered 606010-13; and

IT FURTHER APPEARING that there is an outstanding indebtedness for corporation franchise tax plus penalties and interest in the amount of \$590.00, a portion of which is included in the warrants designated in Schedule C by Case Nos. 44753 and 44851; and

IT FURTHER APPEARING that warrant designated by Case No. AL 901519, for income tax withheld or required to be held by petitioner, all of the warrants referred to herein have been docketed as judgments in the office of the County Clerk of Ulster County; and

IT FURTHER APPEARING that petitioner is insolvent and that the sum of \$20,000 offered in compromise of all liabilities is not less than the amount recoverable through legal proceedings;

IT IS HEREBY ORDERED, pursuant to the authority conferred in and by Section 171, subdivision 15 of the Tax Law, and subject to the reservations and conditions set forth hereinafter, that the taxes herein above mentioned and set forth in the schedules attached hereto be, and the same are, hereby compromised for the sum of \$20,000, subject to the reservation that tax imposed by Article 22 of the Tax Law and represented by collection Case No. AL 901519 for which a warrant was docketed on October 10, 1968 shall not be deemed satisfied pursuant to this order, in view of the personal liability imposed on the responsible officers of petitioner pursuant to Section 685 of the Tax Law, although any lien imposed on property in the hands of petitioner shall hereby be discharged and released; and

IT IS HEREBY ORDERED that petitioner, subject to the reservations set forth above, be discharged and released from liability from all taxes and interest and penalties mentioned and set forth herein and in the schedules attached and a proper and duly executed release of any liability be issued to said petitioner; and

IT IS FURTHER ORDERED that the consideration of \$20,000 shall be paid to the State Tax Commission within ninety days after receipt of the notice of this order, or within such time as the time for payment may be extended, and that upon such payment petitioner will be discharged and released by the State Tax Commission of all taxes, with the exceptions and reservations set forth herein, otherwise this order to be null and void.

STATE TAX COMMISSION

[Signature]
ACTING COMMISSIONER

COMMISSIONER

Milton Korman
COMMISSIONER

DATED: th Nov 19, 1970

APPROVED: *[Signature]*
Justice of the Supreme Court

TURCO MILK TRANSPORTATION
Summary of Diesel Motor Fuel Outstanding Tax Liability

<u>Collection Case#</u>	<u>Period</u>	<u>Tax</u>	<u>Penalty</u>	<u>Total</u>
601537	June 1965	\$1,898.41	\$94.92	\$1,993.33
601538	July 1965	2,515.00	125.75	2,640.75
601782	Aug & Sep '65	3,200.52	173.97	3,374.49
		<u>\$7,613.93</u>	<u>\$394.64</u>	<u>\$8,008.57</u>
602038	Oct. 1965	\$1,890.73	\$94.54	\$1,985.27
602193	Nov. 1965	1,439.43	71.97	1,511.40
602241	Dec. 1965	1,404.21	84.25	1,488.46
		<u>\$12,348.30</u>	<u>\$645.40</u>	<u>\$12,993.70</u>
602240	Jan. 1966	\$1,862.83	\$111.77	\$1,974.60
602536	Apr. 1966	1,990.15	99.51	2,089.66
602679	Feb, Mar, May '66	5,646.59	431.26	6,077.85
		<u>\$21,847.87</u>	<u>1,287.94</u>	<u>\$23,135.81</u>
603521	Aug. 1966	\$1,935.50	\$135.49	\$2,070.99
603567	Oct. 1966	2,270.85	204.38	2,475.23
603568	Nov. 1966	1,246.30	87.24	1,333.54
		<u>\$27,300.52</u>	<u>1,715.05</u>	<u>\$29,015.57</u>
603569	Dec. 1966	\$2,435.89	\$121.80	\$2,557.69
603570	Jan. 1967	2,435.80	121.79	2,557.59
603571	Feb. 1967	1,827.34	91.37	1,918.71
		<u>\$33,999.55</u>	<u>2,050.01</u>	<u>\$36,049.56</u>
606011	Mar. 1967	\$2,252.25	112.61	2,364.86
606013	F/A Assess	2,690.79		2,690.79
	9/64-11/68	<u>38,942.59</u>	<u>2,162.62</u>	<u>\$41,105.21</u>
606012	Apr. 1967	1,979.36	514.63	2,493.99
		<u>\$40,921.95</u>	<u>2,677.25</u>	<u>\$43,599.20</u>

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TURCO MILK TRANSPORTATION
Summary of TMT Outstanding Tax Liability

<u>Date</u>	<u>Assmt. #</u>		<u>Tax</u>	<u>Penalty & Int</u>	<u>Total Tax & P&I</u>	<u>Collection Case #</u>
1/12/67	B-61019	F/A 1/64-8/66.	\$2,903.87	\$289.97	\$3,193.84	603560
2/24/67	B-61893	Sep, Oct, Nov '66		183.47	183.47	603561
3/30/67	B-62736	Dec '66	1,156.59	80.95	1,237.54	603562
4/18/67	B-63356	Jan/67		73.60	73.60	603563
4/18/67	B-63357	Feb '67	1,097.39	54.87	1,152.26	603564
9/18/67	B-66437	Delinquent				
		May & June '67		121.43	121.43	604324
11/6/67	B-67510	May & June '67		136.33	136.33	604236
11/14/67	B-67583	July '67		55.43	55.43	604664
1/16/68	B-68871	Aug '67	1,069.83	96.28	1,166.11	604540
2/6/68	B-69447	Apr & Oct '67	2,233.35	255.50	2,488.85	604665
4/26/68	B-71536	Nov & Dec '67	1,721.22	155.34	1,876.56	605349
10/2/68	B-75026	Jan & May '67	4,683.48	462.96	5,146.44	605444
1/28/69	B-77249	F/A 9/66-11/2/	6,257.77	726.16	6,983.93	606010
		68	\$21,123.50	\$2,692.29	\$23,815.79	

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TURCO MILK TRANSPORTATION, INC.

Kingston, New York

OUTSTANDING WARRANTS PRIOR TO 5/19/67:

<u>CASE NUMBER</u>	<u>AMOUNT</u>	<u>DATE DOCKETED</u>
M-601320	\$1,017.34	11/17/66
M-601535	\$1,718.60	11/17/66
M-601536 (PAID, \$2,700.29; BALANCE DUE: \$27.29)	\$2,668.30	11/17/66
M-601537	\$2,297.08	11/17/66
M-601538	\$3,018.00	11/17/66
M-601782	\$3,791.17	11/17/66
M-602038	\$2,193.25	11/17/66
M-602193	\$1,669.74	11/17/66
M-602241	\$1,614.82	11/17/66
M-602240	\$2,123.63	11/17/66
M-602536	\$2,209.07	11/17/66
M-603521	\$2,187.12	4/12/67

OUTSTANDING WARRANTS SUBSEQUENT TO 5/19/67:

<u>CASE NUMBER</u>	<u>AMOUNT</u>	<u>DATE DOCKETED</u>
M-603567	\$2,883.98	10/10/68
M-603568	\$1,557.87	10/10/68
M-603562	\$1,457.29	10/10/68
M-603569	\$3,044.87	10/10/68
M-603560	\$3,803.65	10/10/68
44753	\$ 22.61	10/10/68
M-603561	\$ 183.47	10/10/68
AL-901519	\$2,986.81	10/10/68
M-603563	\$ 269.86	10/10/68
M-603564	\$3,020.39	10/10/68

TURCO MILK TRANSPORTATION, INC.

Kingston, New York

OUTSTANDING WARRANTS SUBSEQUENT TO 5/19/67: (cont'd)

<u>CASE NUMBER</u>	<u>AMOUNT</u>	<u>DATE DOCKETED</u>
M-603571	\$2,247.63	10/10/68
M-604181	\$2,680.18	10/10/68
M-604236	\$ 136.33	10/10/68
M-604324	\$ 121.43	10/10/68
M-604665	\$2,651.36	10/10/68
M-604664	\$ 55.43	10/10/68
M-604540	\$1,262.39	10/10/68
M-605349	\$1,979.83	10/10/68
M-605444	\$5,146.44	10/10/68
45851	\$ 44.30	10/10/68